

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

JEHAN SEMPER,

Plaintiff,

v.

JBC LEGAL GROUP, *et al.*,

Defendants.

Case No. C04-2240L

ORDER GRANTING PLAINTIFF'S  
MOTION FOR RECONSIDERATION  
AND ORDERING DEFENDANTS'  
TO SHOW CAUSE

This matter comes before the Court on "Plaintiff's Motion for Reconsideration Re: Order Granting in Part Cross-Motions for Dispositive Relief." Dkt. # 92. Although plaintiff's motion was filed two days late, plaintiff, who is proceeding *pro se*, is entitled to some leniency on procedural matters.<sup>1</sup> More importantly, the delay was caused, at least in part, by defendants' discovery failures and plaintiff will not be required to go to trial on a claim about which there is no issue of material fact. Having reviewed the memoranda, declarations, and exhibits submitted by the parties, the Court finds as follows:

(1) Defendants no longer deny that they received a communication from a credit reporting

<sup>1</sup> Defendants' calculation of time is incorrect: pursuant to Fed. R. Civ. P. 6(a), when calculating periods of less than eleven days, the intervening weekends are not counted. In addition, Local Civil Rule 7(h), not Fed. R. Civ. P. 59(e), provides the procedures and standards that govern plaintiff's motion for reconsideration.

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1 agency with regard to the completeness and accuracy of the information provided by defendants.  
2 That notice triggered a duty to conduct a reasonable investigation and to correct any  
3 misinformation. In the context of the summary judgment motion, the Court already determined  
4 that the investigation defendants conducted in this case did not satisfy the standards of  
5 § 1681s-2(b) of the Fair Credit Reporting Act ("FCRA"), 15 U.S.C. § 1681 *et seq.* Therefore,  
6 plaintiff is entitled to summary judgment on her § 1681s-2(b) claim.

7 (2) Having prevailed on her § 1681s-2(b) claim, plaintiff is entitled to seek an award of  
8 punitive damages at trial.


9 (3) Defendants have not provided any justification or explanation for their failure to  
10 produce the Equifax communication during discovery. Defendants assert that they made  
11 "diligent inquiry with the appropriate staff" before responding to plaintiff's various discovery  
12 requests and providing false affidavits to the Court, but the magnitude of this failure requires an  
13 explanation of defendants' mail and document retention procedures as well as a detailed  
14 statement regarding the investigation defendants performed in the course of this litigation.  
15 Defendants are hereby ORDERED TO SHOW CAUSE why they should not be sanctioned for  
16 their failure to disclose information required under the rules of discovery. Such sanctions may  
17 include one or more of the actions authorized under Fed. R. Civ. P. 37(c).

18 (4) Plaintiff has established that, in at least two respects, defendants' "Fact Sheet" is  
19 materially incorrect. Defendants have made no effort to establish how and when this supposed  
20 "record" of plaintiff's account was created or why the communication from Equifax, which was  
21 of vital importance to plaintiff's § 1681s-2(b) claim, was omitted. Defendants will not be  
22 permitted to present or use the "Fact Sheet" at trial unless and until they establish, through  
23 competent and admissible evidence, that the record is both authentic and falls within an  
24 exception to the hearsay rule.

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1 For all of the foregoing reasons, plaintiff's motion for reconsideration is  
2 GRANTED and defendants shall show cause why they should not be sanctioned for discovery  
3 abuses within ten days of the date of this Order.

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5 DATED this 6th day of October, 2005.

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8 Robert S. Lasnik,  
9 United States District Judge  
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